

(V)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACKBENCH: CUTTACK.

Original Application No. 255 of 1987

Date of decision : April 29, 1991.

B.C. Samantray and others ...

Applicants

Versus

Union of India and others ...

Respondents.

For the applicants ...

M/s. C.V. Murty,
C.M.K. Murty, Advocates.

For the respondents ...

Mr. Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M:

THE HONOURABLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *yes*.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J) This is an application by 24 persons who are working as Aircraft Assistants in the Aviation Research Centre (A.R.C.), Charbatia, ^{mainly} ~~Mostly~~ for two reliefs namely, for parity of scales of pay with Aircraft Mechanics in the Civil Aviation Department and for a direction to the Respondents 1 to 4 for making provision of 1/3rd of the cadre of Aircraft Assistants to be in the Selection Grade.

- See Expt 2
29/4*
2. The case of the applicants, stated in brief, is that

initially there were two types of employees, Helpers and Aircraft Cleaners in the pre-revised scales of pay of Rs.150-195/- and Rs.80-120/-. Later the posts were redesignated as Aircraft Assistants and they were given the pay scale of Rs.210-290/- after the recommendations of the Third Central Pay Commission were accepted and the recommended scales of pay were given effect to with effect from 1.1.1973. The Scale of pay of Rs.210-290/- was the one prescribed for Group D employees. But as the applicants belonged to the semi-skilled group, representations were made by them for fixation of their pay in a higher scale and this was recommended by their immediate superior to the Director of A.R.C. by his letter at Annexure-1(ii). Subsequently, the Chief Engineer of the A.R.C. by his letter dated 22/23.4.1975 recommended that the Aircraft Assistants should be given the scale of pay of Rs.260-350/- which was prescribed for Class III Government servants. After those recommendations, in November, 1980 the Director, A.R.C. issued a memorandum, vide Annexure-4, calling upon the persons who were appointed prior to 1.1.1973, ^{to state if they desired} to be treated as Class III employees and ^{of} some of the applicants in fact exercised their options to be treated as Class III employees as a result of which their age of retirement on superannuation came to be reduced by two years i.e. from 60 years to 58 years. In 1981 posts of Aircraft Cleaners ^{were} ~~was~~ redesignated as Aircraft Assistants. By a memorandum dated 5.12.1981 (Annexure-7) Cabinet Secretariat conveyed its decision rejecting the up-gradation of the pay of the Aircraft Assistants whereafter the Aircraft Assistants submitted a represen-

M. S. Singh
29/4.

tation to the then ~~Prime~~ Minister of India through proper channel on 20.2.1982. The Assistant Operation Manager by his letter dated 27.9.1983 informed that the representation of the Aircraft Assistants and the proposal for the revision of their pay was to^{be} considered and reviewed after the receipt of the report of the Fourth Central Pay Commission. In a subsequent letter dated 24.12.1983 information was given that the final decision with regard to the revision of pay and promotional prospects was to be taken by the Cabinet Secretariat and the matter was referred to the said authority. As considerable time elapsed, on 22.4.1985 individual representations to the Cabinet Secretariat were made by the Aircraft Assistants for fixation of their pay in the scale meant for Junior Technical Officers-II as the duties performed by those Technical Officers were similar to those performed by them (Aircraft Assistants). The applicants have also averred that the Aircraft Mechanics in the Civil Aviation Wing also perform similar nature of duties but the pay scale prescribed for them after the Third Central Pay Commission was Rs.425-700/-. In November, 1986 again separate representations were made by the Aircraft Assistants for fixation of their pay scale in the scale of pay of Rs.975-1660/- instead of Rs.825-1200/-. Orders rejecting those representations were communicated to the applicants vide Annexures-11 and 12. On 17.5.1987 applications for recruitment as Fire Operators in the scale of pay of Rs.950-1500/- were invited. Fire Operators' duties are less onerous than those of the Aircraft Assistants. Making these allegations the applicants have

Shankar
29/4

IX

gone ^{on} ~~up~~ to aver that they have been discriminated against by not being given the same scale of pay as the Field Assistants or Aircraft Mechanics who perform similar duties. They have also alleged that there is no promotional avenues. Therefore, a direction for creating promotional avenue for the Aircraft Assistants should be given ^{in addition to one} ~~and~~ to create posts in the selection grade to the extent of $33\frac{1}{3}$ per cent of the total number of posts of Aircraft Assistants.

3. Respondents 1 to 4 are the contestants, the rest of the respondents have not appeared to contest nor have they filed any reply. Respondents 1 to 4 in their counter affidavit have stated as under. They have not disputed that the Aircraft Cleaners were redesignated as Aircraft Assistants. Their case is that prior to 1973 Aircraft Assistants (Aircraft Cleaners) were classified as holders of Group D posts. However, after consideration of the various aspects of the matter it was decided that opportunity was to be given to those appointed prior to 1.1.1973 to opt for being treated as Group C employees and some of the applicants exercised such option and they were treated as if they were Group C employees.

After the review of the cadre and recruitment Rules, the Air Craft Assistants were changed into two groups i.e. of the Ordinary grade who were to get the scale of pay of Rs.210-290/- and selection grade of Rs. 260-350/-. The Cabinet Secretariat revised, by their orders dated 4.11.1986 and 24.2.1987, the scales of pay for the Aircraft

Secy
29/4

Assistants Ordinary grade and of the selection grade, the scale for Ordinary grade was made Rs.820-1200/- instead of Rs.800-1180/- recommended by the 4th Central Pay Commission and for the selection grade, Rs.975-1600/- instead of Rs.950-1400/- recommended by the Fourth Central Pay Commission. The applicants cannot claim parity of pay with the Field Assistants for whom a higher educational qualification is prescribed and they also cannot claim equality of pay with the Mechanics of the Civil Aviation Department or the Junior Technical Officer Grade II since the nature of duties and the prescribed qualifications widely differ. In short, the case of the respondents 1 to 4 is that the applicants are not entitled to the reliefs that they have claimed.

4. We have heard Mr.C.V.Murty, learned counsel for the applicants and Mr.Tahali Dalai, learned Additional Standing Counsel(Central) for the respondents. Mr.Murty has argued at some length about the propriety to make a distinction between those appointed as Aircraft Cleaners prior to 1.1.1973 and those appointed after that date and he has contended that there is no rational basis for making this distinction. Mr.Murty has cited the case of Randhir Singh v. Union of India(AIR 1982 SC 879) and P.Sabita v. Union of India (AIR 1985 SC 1124). There can be no quarrel over the principle of equal pay for equal work nor about the ^{invalidity of} making a discrimination without distinction. But yet it is to be seen whether respondents are guilty of violation of these cardinal principles.

Manoj
29/4/91

(X)

Certain facts need notice. Prior to the framing of the Rules by the President of India on 15.3.1977 under proviso to Article 309 of the Constitution of India, there was no rule nor any executive instructions (no executive instructions are brought to our notice). The scales of pay recommended by the Third Central Pay Commission were given effect to with effect from 1.1.1973. Prior to that date some group C posts carried the scale of pay of Rs.80-120/-. Under the Recruitment Rules for the Airwing of the Aviation Research Centre classification of Aircraft Assistants was group D or Class IV (See Annexure-R/5 to the counter of Respondents 1 to 4). After the report of the Third Central Pay Commission, the scale of pay that was prescribed for Aircraft Cleaners, later ~~on~~ redesignated as Aircraft Assistants, was Rs.210-290/-. ~~As~~ prior to 1.1.1973 some persons were appointed as Aircraft Cleaners and they were drawing pay in the scale of Rs.80-120/-. It was, as stated above, one of the scales for Group C employees. This led to anomalous situation. A solution was aimed at by asking for options from those appointed prior to 1.1.1973 to say whether they would like to be treated as Group C employees or would remain Group D employees as provided for under the Rules. It would thus be seen that treating those persons appointed prior to 1.1.1973 who exercised the option as belonging to Group C, was based on a reason. It is ~~the~~ settled law that if there is a differentiation on rational basis, this cannot be found fault with. Mr. Murty has further contended

M. S. Murthy
28/4

that by being treated as Group C employees and getting salary meant for Group D employees, the applicants have been exposed to double jeopardy inasmuch as they have lost the right to service for two years i.e. from 58 years to 60 years. It is to be noted that by being treated as Group C employees the applicants got some benefits in the matter of T.A. etc. which ^{they} could not have got had they continued as Group D employees. So, they were not without ^{any} corresponding benefit. The pay scales for Aircraft Cleaners after the report of the Third Pay Commission was Rs.210-290/- without any reference to the time when Aircraft Cleaners were appointed. We are, therefore, of the view that there has really been no discrimination between the two classes and the treatment of some as Group C has been based on facts having relevance to such treatment.

5. Mr. Murty has next contended that prescribing Group D scale of pay for Aircraft Cleaners, redesignated as Air Craft Assistants, is improper also on another ground i.e. a Group D employee is an unskilled person whereas Aircraft Assistant is semiskilled person. In this connection he has drawn our attention to the letter of the Chief Engineer dated 22/23.4.1975 (Annexure-2). No doubt the Chief Engineer made a recommendation but the proper authorities to judge all the aspects with regard to the prescribing of a scale of pay are expert bodies like Pay Commissions and the Government, the

M. S. Murthy
29/4/91

XIII

Courts and Tribunals have not the necessary expertise to judge the propriety or otherwise of a particular scale of pay for a particular post, though they can interfere only when it is shown that a different pay scale has been prescribed for another post carrying the same duties and responsibilities. The applicants have prayed for parity in the matter of pay with Aircraft Mechanics in the Civil Aviation Department. Since they have made such a claim, the applicants were given opportunity to place materials before us to show that they and the Aircraft Mechanics in the Civil Aviation Department discharge the same nature of duties and responsibilities, but they have not produced any. That an Aircraft Mechanic has higher responsibilities than the Aircraft Assistant can be gathered from Annexure-2, i.e. the recommendation of the Chief Engineer upon which the applicants have placed reliance. It would be worthwhile to quote a part of that annexure.

"It will readily be clear that this function of supervision of Aircraft Cleaners' work by the Mechanic cannot be exercised to the desired extent".

This would make it clear that Aircraft Mechanics are of **higher** category. Hence, this annexure goes against the contention of the applicants that their work is the same as performed by the Aircraft Mechanics.

6. So far as the claim to class the applicants **equal** ^{to} Junior Technical Officers is concerned, it is wholly without substance because the educational qualification prescribed for Junior Technical Officer Grade II is

Meen
29/4.

XIV

Matriculation or equivalent with 8 years experience of maintenance, repair and overhaul etc. of transport Aircraft/Helicopters whereas the educational qualification prescribed for Aircraft Assistants is only Middle School standard pass. It has now been settled beyond controversy that when minimum educational qualification prescribed is not the same for two posts, no claim for equality in the pay scales can be entertained. To add to this, the duties of the Aircraft Assistants as mentioned in Annexure-R/7, are less onerous and responsible than the post of Junior Technical Officer Gr.II vide Annexure-R/8. As would be found from paragraph 5 of the counter affidavit of the respondents 1 to 4, after receiving the representations of the Aircraft Assistants, the Cabinet Secretariat examined their grievances, and having regard to the nature of their duties and responsibilities instead of recommending a lower scale of pay of Rs.800-1150/-, which is prescribed for some other Group D employees, allowed a slightly higher pay scale for Aircraft Assistants of the Ordinary Grade i.e. Rs.825-1200/- and similarly for Aircraft Assistants in the selection grade the scale of pay of Rs.975-1660/- was prescribed instead of Rs.950-1400/-. It would thus be seen that the matter was examined by the competent authority and scales of pay were prescribed after due consideration. To repeat once more, it may be stated that this Tribunal is not an expert body to judge the propriety of the prescribed scale.

7. The other prayer of the applicants is that

XIV
XV

1/3rd of the total number of posts should be declared to be in the Selection Grade. Ordinarily 20 per cent of the total cadre strength is made selection grade. Therefore, this prayer of the applicants does not prima facie appear to be proper one. However, we do not mean to express any opinion in this regard, the authorities are free to consider, if they so chose, to declare such number of posts in the cadre to be in the selection grade as they deem fit.

8. The applicants have asked for a direction for making appropriate provision for promotion. The selection grade posts are created when there are ^{no} promotional avenues or chances of promotion are remote. Therefore, we are unable to accede to this prayer of the applicants.

9. In view of what has been stated above, we do not find any merit in this application. Accordingly, it is rejected subject to the observation with regard to selection grade made above. No costs.

P. S. Mishra
29.4.91
VICE-CHAIRMAN



M. S. Singh
29.4.91
MEMBER (JUDICIAL)

Central Administrative Tribunal
Cuttack Bench, Cuttack
April 29, 1991/Saranggi.